

Security Industry Amendment Bill 2005

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Security Industry Act 1997* (***the Principal Act***) as follows:

- (a) to expand the range of security activities that are required to be licensed under the Principal Act,
- (b) to exclude further categories of law enforcement officers from the application of the Principal Act,
- (c) to increase the maximum monetary penalty for offences under the Principal Act,
- (d) to create a class of provisional licences for new entrants to the security industry who carry on security activities of the kind covered by a class 1 licence (such as security guards, bodyguards and bouncers),
- (e) to impose restrictions on the granting of licences on such grounds as security industry experience, liability for civil penalties and (in the case of applicants who are police officers) conflicts of interest,
- (f) to impose conditions on the storage of firearms by those licensees who are authorised under the *Firearms Act 1996* to possess firearms,
- (g) to modify the way in which applications for licences are investigated,
- (h) to preserve the confidentiality of criminal intelligence concerning licence applicants,
- (i) to further regulate the wearing of licences by licensees,
- (j) to limit the delegation of functions under a licence, including by subcontracting,
- (k) to modify the elements of certain offences,
- (l) to further regulate the supervising, monitoring, rostering and scheduling of persons carrying on security activities,
- (m) to extend the power of police officers to gather evidence of the commission of offences under the Principal Act,
- (n) to provide for the establishment by the Minister of a Security Industry Council,
- (o) to make a number of other minor and consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Security Industry Act 1997* set out in Schedule 1.

Clause 4 amends the *Firearms Act 1996* to make it a mandatory ground for the revocation of a firearms licence held by a provisionally licensed armed security guard if the guard's provisional licence is revoked or if the guard contravenes a condition of his or her firearms licence.

Schedule 1 Amendment of Security Industry Act 1997

Amendment of defined terms

Schedule 1 [1] and [2] make consequential amendments to the definition of ***armed security guard***.

Schedule 1 [3] replaces the definition of ***employ*** so that it excludes subcontracting or arranging by contract, franchise or otherwise for the purpose of employing or providing persons.

Schedule 1 [4] replaces the definition of ***security activity*** so that it also includes the following types of activities, and applies to the use of electronic means as well as

physical means:

- (a) providing close personal protection or acting in a similar capacity,
- (b) acting as a venue controller or in a similar capacity,
- (c) carrying on control room operations, monitoring centre operations, retail loss prevention, airport security and infrastructure security and guarding using patrol dogs,
- (d) installing, maintaining, repairing or servicing equipment that is purported to be security equipment,
- (e) selling security equipment or equipment that is purported to be security equipment,
- (f) selling security methods or principles,
- (g) selling the services of security personnel,
- (h) identifying and analysing security risks and providing solutions, management strategies or both to minimise security risks,
- (i) assessing training, instruction or competencies in relation to security activities,
- (j) supervising or monitoring persons carrying on any security activities,
- (k) acting as an agent for, obtaining contracts for or brokering any security activity or otherwise arranging by contract, franchise or otherwise for the purpose of employing or providing persons to carry on security activities.

Exclusion of persons from application of Act

At present, section 6 (2) of the Principal Act excludes police officers and certain other persons from the application of the Principal Act.

Schedule 1 [6] excludes members of NSW Police who are not police officers (such as administrative staff) from the application of the Principal Act.

Schedule 1 [7] provides that the exclusion of persons under section 6 of the Principal Act extends to any conduct in the course of official employment.

Schedule 1 [8] excludes certain other categories of law enforcement officers from the application of the Principal Act and also enables the Commissioner of Police to exempt persons who provide training or instruction in security activities covered by class 2 licences from the requirement to have a licence to provide that training or instruction.

Schedule 1 [5] makes a consequential amendment.

Increased penalties

Schedule 1 [9] redrafts section 7 of the Principal Act to separate it into 2 offences, one of employing or providing persons to carry on security activities without being authorised by a master licence and the other of carrying on any other security activity without being authorised by another class of licence. The maximum penalty for corporations committing the first offence is increased from 100 penalty units to 1,000 penalty units and the maximum penalty for individuals committing the first offence is increased from 50 penalty units or imprisonment for 6 months, or both, to 500 penalty units or imprisonment for 2 years, or both. The maximum penalty for persons committing the second offence is increased from 50 penalty units or imprisonment for 6 months, or both, to 500 penalty units or imprisonment for 2 years, or both.

Schedule 1 [49] increases the maximum penalty for contravening a condition of a licence from 40 penalty units to 200 penalty units (in the case of a corporation) or 100 penalty units or imprisonment for 6 months, or both (in the case of an individual).

Schedule 1 [51] increases the maximum penalty for failing to surrender a suspended or revoked licence from 20 penalty units to 200 penalty units (in the case of a corporation) or 100 penalty units or imprisonment for 6 months, or both (in the case of an individual).

Schedule 1 [52] increases the maximum penalty for an unlicensed corporation advertising that a person carries on or is willing to carry on any security activity, or failing to include the number of a licence in an advertisement, from 40 penalty units

to 200 penalty units.

Schedule 1 [53] increases the maximum penalty for such advertising or such a failure by an individual from 20 penalty units to 100 penalty units or imprisonment for 6 months, or both.

Schedule 1 [55] increases the maximum penalty for falsely, misleadingly or deceptively inducing or attempting to induce any person to enter into an agreement or contract in connection with the carrying on of any security activity or for wilfully concealing any material fact in doing so from 20 penalty units to 200 penalty units (in the case of a corporation) or 100 penalty units or imprisonment for 6 months, or both (in the case of an individual).

Schedule 1 [56] increases the maximum penalty for making a false or misleading representation in an application or in information or particulars furnished under the Principal Act from 20 penalty units to 50 penalty units.

Schedule 1 [57] increases the maximum penalty for abuse of the authority conferred by a licence from 40 penalty units to 50 penalty units.

Schedule 1 [59] increases the maximum penalty for failure to produce a licence for inspection on demand from 20 penalty units to 50 penalty units.

Schedule 1 [60] increases the maximum penalty for failing to wear a licence so that it is clearly visible from 40 penalty units to 50 penalty units.

Schedule 1 [62] increases the maximum penalty for selling, disposing of, delivering, letting out, hiring or renting a licence to an unlicensed person, or permitting any other person to use a licence, from 20 penalty units to 200 penalty units (in the case of a corporation) or 100 penalty units or imprisonment for 6 months, or both (in the case of an individual).

Schedule 1 [67] increases the maximum penalty for employing unlicensed persons from 40 penalty units to 200 penalty units (in the case of a corporation) or 100 penalty units or imprisonment for 6 months, or both (in the case of an individual).

Schedule 1 [69] increases the maximum monetary penalty for failing to submit any firearm for ballistics tests, or for modifying a firearm after testing, from 50 penalty units to 100 penalty units.

Schedule 1 [74] increases the maximum penalty for obstructing, hindering, preventing or interfering with a police officer's powers of inspection and seizure, or failing to answer certain questions asked by a police officer, from 50 penalty units to 100 penalty units.

Schedule 1 [85] increases the maximum penalty for an offence under the regulations committed by an individual from 5 penalty units to 50 penalty units.

Schedule 1 [86] increases the maximum penalty for an offence under the regulations committed by a corporation from 20 penalty units to 100 penalty units.

Provisional licences

At present, apprentices or trainees who carry on security activities in the course of their apprenticeship or training with a licence holder are exempt from the application of the Principal Act (see clause 5 (e) of the *Security Industry Regulation 1998*). That exemption is proposed to be replaced by a system of provisional licensing of new entrants to the security industry (established by the following amendments made by the proposed Act). This system of provisional licensing will only apply in relation to the security activities covered by a class 1 licence.

Schedule 1 [10] creates the class of provisional licences as a separate class of licences.

Schedule 1 [16] specifies the authority conferred by each subclass of provisional licence. The authority that is conferred corresponds to the activities authorised to be carried on by a class 1 licence. Provisional licences do not apply in relation to the activities that are authorised to be carried on by a class 2 licence.

Schedule 1 [18] and [44] make consequential amendments.

Schedule 1 [42] inserts proposed section 23C into the Principal Act, which imposes

special conditions, including training requirements, in relation to class P1F licences for armed security guards.

Schedule 1 [48] inserts proposed section 29A into the Principal Act, which makes it an offence for the nominated employer of the holder of a provisional licence to fail to ensure that the holder is directly supervised and proposed section 29B (2), which makes it an offence for the holder of a provisional licence to carry on a security activity authorised by that licence unless the person is employed by a master licensee.

Schedule 1 [54] provides that the holder of a provisional licence must not advertise that he or she carries on or is willing to carry on any security activity.

Master licences

Schedule 1 [12] specifies the 4 subclasses of master licence, each of which authorises the holder to employ or provide a different number of licensed persons.

Schedule 1 [39] extends a prohibition on employment of certain persons by master licensees to also prohibit the provision of such persons.

Schedule 1 [66] omits the word “knowingly” from section 39 of the Principal Act (which currently makes it an offence for a master licensee to knowingly employ any person to carry on any security activity if that person is not the holder of a licence). This puts the onus on the master licensee to check the licensing status of every employee.

Schedule 1 [68] provides a defence to a prosecution under section 39 of the Principal Act if the master licensee can show that the master licensee did not know, and could not reasonably have been expected to know, that the person was unlicensed.

Class 1 and class 2 licences

Schedule 1 [13] and [14] create new subclasses of class 1 and class 2 licences as a consequence of the extension of the definition of *security activity*.

Schedule 1 [17] omits a provision that currently provides that a person is eligible to hold a class 1 or class 2 licence only if the person is an individual who is employed by a master licensee. This amendment is consequential on the insertion of proposed section 29B (1) by **Schedule 1 [48]**.

Schedule 1 [41] is consequential on the creation of new subclasses of class 1 and provisional licences.

Schedule 1 [48] inserts proposed section 29B (1) into the Principal Act, which makes it an offence for a person who holds a class 1 or class 2 licence to carry on a security activity unless the person is employed by a master licensee (or is self-employed and holds a master licence).

Restrictions on granting licences

Schedule 1 [19] requires an applicant for a class 1 licence, class 2 licence or provisional licence who is employed to provide the name and business address of the applicant’s employer.

Schedule 1 [20] requires an applicant for a class 1 licence who has previously held such a licence or a provisional licence to supply proof of the person’s employment in carrying on security activities during the term of that licence, by providing the names of the person’s employers and by providing records indicating the type of work performed. Applications for provisional armed security guard licences must be made on behalf of the applicant by the applicant’s employer (who must be an approved cash in transit provider).

Schedule 1 [21] updates a provision of the Principal Act to refer to “competencies” rather than “qualifications” and to clarify that the requirement to have competencies does not apply to a provisional licence.

Schedule 1 [22] gives the Commissioner of Police the discretion to refuse to grant a licence if the applicant:

(a) in the case of an application for a class 1 licence—has not held a provisional licence for at least 12 months or has never been previously authorised by a class 1 licence to carry on the security activity to which the proposed licence

relates, or

(b) in the case of an application for a provisional licence—has not completed an approved security industry training course, or

(c) in the case of an application for a class 1 licence by a person who has previously held a licence to carry on the security activity to which the proposed licence relates—fails to demonstrate active participation or employment in the security industry during the term of the previous licence.

Schedule 1 [23] enables the regulations to modify the application of a provision that extends licensing criteria to the close associates of applicants for master licences.

Schedule 1 [24] provides that different criminal offences can be prescribed as making a person ineligible for different classes of licence.

Schedule 1 [25] provides that the Commissioner must refuse an application for a licence if the Commissioner is satisfied that, within the period of 5 years before the application for the licence was made, the applicant has had a civil penalty imposed on him or her by a court in New South Wales or elsewhere, being a civil penalty prescribed by the regulations in relation to the class of licence applied for. The amendment also requires the Commissioner to refuse an application if the applicant has, within the period of 10 years before the application for the licence was made, been removed or dismissed from NSW Police or from the police force of any other jurisdiction (whether in Australia or overseas) on the ground of the applicant's integrity as a police officer.

Schedule 1 [27] provides that the Commissioner may refuse to grant an application for a licence if the applicant has, within the period of 10 years before the application for the licence was made, been removed from NSW Police on grounds other than the grounds of the applicant's integrity as a police officer.

Schedule 1 [29] provides that the Commissioner must refuse to grant an application for a licence to a police officer or other member of NSW Police if the Commissioner considers that the grant of the licence would create a conflict of interest.

Schedule 1 [26], [28], [30] and [45] are consequential amendments.

Firearms

Schedule 1 [40] makes it a condition of every class 1F or P1F licence that the licensee must not carry on the security activity authorised by the licence unless the licensee is authorised by a licence or permit under the *Firearms Act 1996* to possess or use a firearm.

Schedule 1 [42] inserts proposed section 23B into the Principal Act, which provides that it is a condition of every class 1F or P1F licence that the licensee must not store a firearm at any prohibited premises, that is, on residential premises that are regularly used as a principal or temporary place of residence by a person convicted of an offence that would exclude the person from holding a licence under the Principal Act. It is also made a condition of every master licence that, if the master licensee employs a person as an armed security guard, the master licensee must not allow any firearm in the master licensee's possession (including those firearms that have been acquired by the master licensee in connection with the master licensee's business) to be stored at any prohibited premises.

Investigation of licence applications

Schedule 1 [31] extends the Commissioner's power to investigate applications and applicants to include investigation of each close associate of an applicant for a master licence.

Schedule 1 [32] and [33] provide for applications for a licence made by any person who is currently, or was at any time, a police officer or a member of the police force of any other jurisdiction to be referred to the NSW Police Special Crime and Internal Affairs Branch. At present, section 19 of the Principal Act applies only to former police officers.

Schedule 1 [34] makes the suitability of a police officer applicant being employed

by any specified master licensee a factor that the Special Crime and Internal Affairs Branch can consider.

Schedule 1 [35] provides that the Commissioner may require an applicant for a class 1 licence who has previously held a class 1 or provisional licence to provide statements from previous employers about the duration of employment and the activities carried on by the applicant during the applicant's employment. **Schedule 1 [36]** makes a consequential amendment.

Schedule 1 [37] provides for the Commissioner to certify the reasonable costs incurred in investigating and inquiring into an application for a licence.

Confidentiality of certain information

At present, section 15 (6) of the Principal Act provides that, for the purpose of determining whether an applicant is a fit and proper person to hold the class of licence sought by the applicant, the Commissioner may have regard to certain criminal intelligence reports or other criminal information held in relation to the applicant. Section 26 (1) (c) of the Principal Act provides for a licence to be revoked if the Commissioner is of the opinion that the licensee is no longer a fit and proper person to hold a licence.

Schedule 1 [47] ensures the confidentiality of that information in the course of the Administrative Decisions Tribunal reviewing a decision made under the Principal Act to refuse to grant a licence or to revoke a licence.

Licence to be worn by licensee

At present, section 36 of the Principal Act requires the holder of a class 1 or class 2 licence to wear on his or her person the form of the licence that contains a photograph of the licensee at all times while carrying on a security activity. There is a requirement that the licence be clearly visible.

Schedule 1 [60] extends the obligation to provisional licensees and specifies that the original licence (and not a photocopy) must be worn.

Schedule 1 [61] specifies what is required for the licence to be clearly visible and provides for the regulations to impose additional requirements.

Prohibitions on delegation of functions

At present, section 38 of the Principal Act makes it an offence for a licensee to delegate the carrying on of a security activity to a person who is not the holder of a licence.

Schedule 1 [63] further requires that the person to whom the carrying on of a security activity is delegated must be licensed to carry on the same activity as that delegated.

Schedule 1 [64] prohibits a licensee who is the holder of a provisional licence from delegating any security activity.

Schedule 1 [65] inserts proposed section 38A into the Principal Act which provides that where a master licensee is engaged by a client for the provision of a security activity (other than the provision of a restricted security keying system) and that master licensee subcontracts any of its functions under the contract to another master licensee, then the contract for service between the principal master licensee and the subcontractor must be co-signed and approved by the client. If the subcontractor further subcontracts any of the functions under their contract, then that subcontract must be co-signed and approved by the client and the principal master licensee.

Supervision, monitoring, rostering and scheduling of licensed persons

Schedule 1 [65] inserts proposed section 38B (1) into the Principal Act, which provides that a person must not supervise or monitor the performance of the holder of a provisional licence unless the person supervising or monitoring is authorised by a class 1 licence to carry on the same security activity as that authorised by the provisional licence.

Schedule 1 [65] also inserts proposed section 38B (2) into the Principal Act, which provides that a person must not supervise or monitor the performance of the holder of a class 1 or class 2 licence unless the person supervising or monitoring holds a

master licence or a licence of the same kind as the person being supervised or monitored.

Schedule 1 [65] also inserts proposed section 38C which prevents a person who would be ineligible to hold a licence because of his or her criminal history from rostering or scheduling the performance of a security activity by a licensed person.

Security Industry Council

Schedule 1 [77] provides for the establishment of a Security Industry Council by the Minister, sets out the functions of the Council and provides for the regulations to make provision in relation to the appointment of the members of the Council.

Other miscellaneous amendments

Schedule 1 [11] enables composite licences to be granted. **Schedule 1 [15]** is a consequential amendment.

Schedule 1 [38] makes it clear that conditions may be imposed on a licence at any time.

Schedule 1 [43] provides that a licence may be revoked if the applicant fails to collect the licence within 60 days after being notified of the grant of the licence.

Schedule 1 [46] makes it clear that such a revocation is not a “decision” that is reviewable by the Administrative Decisions Tribunal. **Schedule 1 [50]** is a consequential amendment.

Schedule 1 [58], [75] and [80] update references to NSW Police.

Schedule 1 [70] requires a master licensee to prepare and implement a fitness for work policy in relation to the persons employed or provided by the licensee.

Schedule 1 [71] enables a court that imposes a civil penalty (of a kind prescribed by the regulations) on a licensee to suspend the licence for up to 28 days.

Schedule 1 [72] provides that in the exercise of any power to enter the premises of a master licensee under the Principal Act or any other Act, a police officer may, if the police officer considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, make a copy of any registers, books, records or other documents relating to the business being carried on under the authority of the master licence and retain that copy. **Schedule 1 [73]** makes it an offence to fail to assist a police officer to make such copies when directed to do so.

Schedule 1 [76] updates terminology relating to persons who are employed in the Public Service.

Schedule 1 [78] modifies the provision that makes the directors of a corporation also liable for any offence committed by the corporation.

Schedule 1 [79] removes an obsolete reference to the manner in which a Local Court is constituted for the purposes of dealing with offences under the Principal Act or the regulations.

Schedule 1 [81] provides that a notice or instrument is taken to have been served at the time it would have been delivered in the ordinary course of post.

Schedule 1 [82] allows for certificates to be issued relating to certain matters under the Principal Act.

Schedule 1 [83] allows for certain documents to be taken to be evidence of certain matters.

Schedule 1 [84] updates a reference to “training courses”.

Schedule 1 [87] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [88] inserts savings and transitional provisions consequent on the enactment of the proposed Act.